

## **EXHIBIT J**

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VOLUME II

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN RE:

Methyl Tertiary :MDL NO. 1358 (SAS)  
Butyl Ether ("MTBE") :  
Products Liability :  
Litigation :

In Re:

City of New York  
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CONFIDENTIAL (Per 2004 MDL 1358 Order)  
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April 7, 2009  
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Continued Videotaped  
Deposition of DAVID B. TERRY, P.G., held  
in the law offices of McDermott, Will &  
Emery, 340 Madison Avenue in New York,  
New York, beginning at approximately  
9:14 a.m., before Ann V. Kaufmann, a  
Registered Professional Reporter,  
Certified Realtime Reporter, Approved  
Reporter of the U.S. District Court, and  
a Notary Public.  
  
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<p>1 A. I didn't analyze them 2 separately, but I am aware that there's 3 aspect ratio aspects to the model. 4 Q. Do you know what -- the 5 highest aspect ratios that were used in 6 the model? 7 A. I don't specifically know. 8 I know that some of the cells near the 9 boundary, for example, have probably 10 some of the higher aspect ratios. 11 Q. Do you know what those are? 12 A. What the cells are? 13 Q. No. What the aspect ratios 14 are. 15 A. I don't know the numbers. 16 Q. Okay. Can the aspect ratio 17 affect the reliability of a model? 18 A. It can. 19 Q. Under what circumstances, 20 do you know? 21 A. Well, for example, if one 22 is trying to conduct a particle tracking 23 exercise, then things like the aspect 24 ratio can influence the location of that</p>	<p>1 that release occurred to the point where 2 MTBE had reached the groundwater? 3 A. Yeah. In the way that we 4 did the modeling here, we assumed that 5 MTBE would be reaching the groundwater 6 in 1990. And typically the spill 7 numbers, you know, occur -- are entered 8 at a date after the spill occurs, 9 especially for the unknown releases, the 10 subsurface releases. 11 Q. So is it fair to say then 12 that the time would have been zero, 13 there would have been no time elapsed in 14 your model, it would have been 15 instantaneous with the release that the 16 MTBE reached the groundwater table? 17 MR. GREENE: Objection. 18 A. I'm not exactly saying 19 that. What I'm saying is there is a 20 spill that occurred at some point in 21 time, and then in 1990 that spill -- 22 evidence of that spill was discovered. 23 So there would be a time lapse there 24 that's no more than zero.</p>
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<p>1 particle, the relative confidence that 2 you would have in the extent of the 3 capture zone a particle moving through. 4 Q. When you are doing modeling 5 with LBG, is there any type of company 6 or guidance that you use on this for 7 determining what the maximum size aspect 8 ratio of a cell should be? 9 A. I don't think we have a 10 standard reference for that. 11 Q. I would like you to look at 12 Table 4, the same table we were just 13 looking at, if you could, sir. And 14 let's focus on the site at 84-02 Parsons 15 Boulevard that has a site designation of 16 s6-002. 17 Now, I'm going to ask you 18 for the release that occurred in 1990 19 for Analysis 2, what in your modeling 20 effort -- what was the time, the value 21 of the time, that the -- I'm not saying 22 that right. 23 How much time elapsed in 24 your modeling effort from the time that</p>	<p>1 And then what our modeling 2 did was assume it is entering the 3 groundwater beginning in that time. 4 Q. Do you have any information 5 about that specific spill, as to when it 6 occurred? 7 A. Not in front of me today. 8 All we used here, I believe -- what we 9 typically used here was the spill -- 10 information and the spill number or 11 reported spill date in the file. 12 Q. Okay. But did you do an 13 evaluation to determine at least an 14 estimate of when the spill occurred as 15 opposed to the date that you have here 16 on Table 4? 17 A. No. One of the simplifying 18 aspects of this is that we assigned the 19 spill date to the case number date, the 20 spill report date. That is a 21 simplifying assumption that we made. 22 Q. Now, the unsaturated 23 thickness for this spill at this 24 location, 84-02, was 34 -- I'm sorry,</p>

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<p>1 35.14 meters; is that correct, sir?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. That is roughly,</p> <p>4 I -- late in the day, but I think that's</p> <p>5 roughly somewhere around 115 feet.</p> <p>6 Now, in terms of your model,</p> <p>7 you didn't consider that 150 feet -- 115</p> <p>8 feet at all, is that correct, in</p> <p>9 calculating how long it would take for</p> <p>10 the release to move through that</p> <p>11 unsaturated zone to the groundwater</p> <p>12 table?</p> <p>13 MR. GREENE: Objection.</p> <p>14 A. The way that we conducted</p> <p>15 the analysis, we're assuming that by</p> <p>16 1990 this spill that occurred at some</p> <p>17 unknown previous date would have reached</p> <p>18 the water table then.</p> <p>19 Q. And that would be the same</p> <p>20 for all of the releases or all of the</p> <p>21 sites shown on this Table 4, isn't that</p> <p>22 correct, independent of the unsaturated</p> <p>23 thickness?</p> <p>24 A. That's correct.</p>	<p>1 instantaneous in your model, let's put</p> <p>2 it that way?</p> <p>3 A. Well, it starts to enter</p> <p>4 groundwater on that date, that's true.</p> <p>5 Q. Okay. As I understand it,</p> <p>6 your cells that you have in your</p> <p>7 model -- and this had would be for</p> <p>8 either -- for Analysis 1, and we can</p> <p>9 focus for Analysis 1 -- the cells have</p> <p>10 various dimensions, but the depth of the</p> <p>11 cell is essentially the depth of the</p> <p>12 water table?</p> <p>13 A. Well, the cell actually can</p> <p>14 extend above the water table, but</p> <p>15 effectively the part above the water</p> <p>16 table doesn't really count. So</p> <p>17 essentially the thickness, the saturated</p> <p>18 thickness is the depth, the effective</p> <p>19 depth of the model.</p> <p>20 Q. If you have a sample from</p> <p>21 some portion of that saturated</p> <p>22 thickness, isn't it fair to say that you</p> <p>23 assigned that result from that sample,</p> <p>24 that concentration from that sample, to</p>
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<p>1 Q. Just so I'm clear and that</p> <p>2 the record is clear then, your model,</p> <p>3 even though it lists the release having</p> <p>4 occurred at a particular date, you did</p> <p>5 not consider the time from that date at</p> <p>6 all in determining how long it would</p> <p>7 take for the release to reach the</p> <p>8 groundwater table? That was just an</p> <p>9 instantaneous value at -- and it</p> <p>10 occurred at the time when -- of the</p> <p>11 release that you have on your second</p> <p>12 column in Table 4?</p> <p>13 A. Well, what we used, we used</p> <p>14 this date as the surrogate for when MTBE</p> <p>15 from this spill would start to enter</p> <p>16 groundwater. But I wouldn't myself</p> <p>17 characterize it as instantaneous,</p> <p>18 because the spill typically occurred</p> <p>19 before that date. And also we did</p> <p>20 simulate a rate of loading to</p> <p>21 groundwater that was not instantaneous</p> <p>22 even after that date.</p> <p>23 Q. I didn't mean to</p> <p>24 characterize it that way. It is</p>	<p>1 the entire saturated thickness?</p> <p>2 A. Are you talking about a</p> <p>3 specific analysis?</p> <p>4 Q. For Layer 1 in</p> <p>5 Analysis 2 -- in Analysis 1, Layer 1.</p> <p>6 A. That's true, we did do</p> <p>7 that.</p> <p>8 Q. When you looked at a</p> <p>9 particular sampling location and you got</p> <p>10 a value for that sampling location, did</p> <p>11 you make any effort to try to determine</p> <p>12 how far down vertically that sample</p> <p>13 would represent?</p> <p>14 A. In other words, there's a</p> <p>15 depth to a well, and so what you are</p> <p>16 asking me did we look at the well depth</p> <p>17 as part of what we did in the analysis?</p> <p>18 Q. A well depth or other wells</p> <p>19 or any type of well clusters that may</p> <p>20 have been in the area, anything.</p> <p>21 A. Well, for the purpose of</p> <p>22 Analysis 1 where we really -- where is</p> <p>23 the analysis where we used water quality</p> <p>24 data, we just looked for maximum</p>

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